



INTERNATIONAL CONFERENCE ON AIR LAW

(Beijing, 30 August – 10 September 2010)

POSSIBLE FORMS OF INSTRUMENTS TO BE ADOPTED AT THE DIPLOMATIC CONFERENCE ON AVIATION SECURITY

(Presented by the Secretariat)

1. INTRODUCTION

1.1 During the 34th Session of the Legal Committee in 2009, when the Committee considered the draft amendments to the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* (the Montreal Convention) and to the *Convention for the Suppression of Unlawful Seizure of Aircraft* (The Hague Convention), the forms of the amending instruments were discussed but no definite conclusions were made. In order to facilitate the discussion of this matter during the Diplomatic Conference in Beijing, the Secretariat proposed to establish an informal group to further explore the possible solution. The group was composed of representatives from Australia, China, Egypt, France, Singapore, the United States and the African Civil Aviation Commission. Ms. Siew Huay Tan (Singapore) chaired the discussions of the informal group. This working paper reflects the discussions of the group.

2. THE FORM OF AMENDMENTS TO THE MONTREAL CONVENTION

2.1 When the amendments to the Montreal Convention were originally drafted, they were in the form of an amending protocol, which was considered as the easiest way to accomplish the task. Upon further study, attention was focused on the fact that the proposed amendments would amend the provisions of the Montreal Convention as well as those provisions added by the 1988 Protocol* which also needs to be amended. Further, the proposed amendments being considered by the Diplomatic Conference in Beijing are extensive both in terms of their substance and scope. Moreover, the existing Convention and its first amending protocol were adopted in four official languages of ICAO, whereas the proposed new amendments should include Arabic and Chinese versions. For these reasons, the option of a second protocol to amend the Convention and its first protocol may not be the best, or most user-friendly, solution.

2.2 The recommendation of the informal group, subject to the decision of the Diplomatic Conference, would be to adopt a stand-alone convention in Beijing, which will consolidate the Montreal Convention, its 1988 Protocol and the new amendments proposed at the Diplomatic Conference. This new instrument could possibly be known as the 2010 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (or similar) and the Beijing Convention in its short form. This would also overcome the difficulty with respect to the language versions, since the new instruments will be adopted in six languages.

2.3 In discussing the aforementioned approach, the informal group had also identified a number of related issues in adopting a stand-alone convention. Firstly, certain provisions in the final clauses may be necessary to indicate that the new convention should prevail between the parties to the new convention over the Montreal Convention and 1988 Protocol; secondly, it would be desirable if the

* *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Done at Montreal on 23 September 1971, Signed at Montreal on 24 February 1988.*

Diplomatic Conference would concentrate on the amending proposals put forward by the Legal Committee.

3. THE FORM OF AMENDMENTS TO THE HAGUE CONVENTION

3.1 The Hague Convention, unlike the Montreal Convention, has never been amended, and would therefore not have the complications of multiple protocols that would be faced with the Montreal Convention. Further, the proposed amendments to The Hague Convention, while important updates, are less in scope than those proposed for the Montreal Convention and would seem to be more appropriate for a protocol. The Hague Convention was also adopted in four official languages of ICAO. Consequently, the difficulty with respect to the language versions mentioned above with respect to the Montreal Convention will also remain in the amending process of The Hague Convention. With respect to the issue of language versions, the protocol could contain an operative provision establishing that the Arabic and Chinese texts of The Hague Convention, as attached in the annex, shall be considered the authentic texts in those languages between the parties to the new protocol. It may also be considered to reflect the integrated text of the amended Convention in the Final Act in all six languages.

4. NUMBER OF RATIFICATIONS REQUIRED TO BRING THE INSTRUMENTS INTO FORCE

4.1 The informal group noted that The Hague and the Montreal Conventions each required 10 ratifications to bring the relevant instrument into force, whereas some of the more recent UN conventions on counter-terrorism, such as the *International Convention for the Suppression of Terrorist Bombings*, the *International Convention for the Suppression of the Financing of Terrorism* and the *International Convention for the Suppression of Acts of Nuclear Terrorism* require 22 ratifications. The group believed that this information should be provided to the Diplomatic Conference.

5. DEPOSITARY

5.1 The Hague and the Montreal Conventions respectively have three depositaries, which may not be necessary today. It has been suggested by the informal group that ICAO should be the depositary for both instruments to be adopted in Beijing.

6. NINETY-DAY PERIOD FOR VERIFICATION OF LANGUAGE VERSIONS OF THE INSTRUMENTS

6.1 The informal group wishes to note that it was the practice of ICAO in the previous diplomatic conferences that after the conclusion of a convention or protocol, a ninety-day period would be allowed for the purpose of the verification of certain language versions of the convention or protocol from an editorial point of view. The final language versions are normally determined by the Secretariat and approved by the President of the Conference.

7. CONCLUSION

7.1 The Diplomatic Conference may consider adoption of the amendments to the Montreal Convention in the form of a stand-alone convention and adoption of the amendments to The Hague Convention in the form of a protocol, which will include in its annex the authentic Arabic and Chinese texts of The Hague Convention.